STATE OF MICHIGAN

COURT OF APPEALS

KATHRYN A. LEBOEUF,

Plaintiff-Appellant,

v

HINES INTERESTS LIMITED PARTNERSHIP and LAKESIDE BUILDING MAINTENANCE OF MICHIGAN, L.L.C.,

Defendants-Appellees.

UNPUBLISHED
October 20, 2005

No. 262198
Wayne Circuit Court
LC No. 04-415070-NO

Before: Fort Hood, P.J., and White and O'Connell, JJ.

PER CURIAM.

In this premises liability case, plaintiff appeals as of right an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). She also challenges the trial court's denial of her motion for reconsideration pursuant to MCR 2.119(F). We affirm.

Plaintiff fell during a fire drill at Detroit's Renaissance Center, where she was an employee of one of the building's tenants. The building was managed on behalf of its owner by defendant Hines Interests Limited Partnership ("Hines"), and defendant Lakeside Building Maintenance of Michigan, L.L.C. ("Lakeside") provided cleaning services for Hines. The drill was conducted, with Hines' approval, by the building's security department. The security department was not named in this suit.

Plaintiff worked on the thirty-sixth floor. She was among a group of physically challenged employees who did not use stairwells during fire drills. Instead, a security guard accompanied the group to a holding area on the thirty-first floor. The employees rode down in a freight elevator, crossed a small lobby, and entered the interior holding area. After receiving the "all clear" signal, the security guard called them back to the elevator. When the employees walked back across the linoleum lobby, plaintiff fell. She alleges injuries as a result of the fall. On appeal, she argues that the trial court erred in finding no genuine issues of material fact regarding whether defendants had a duty to discover the hazard and to protect her against it. We agree with the trial court.

We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). It is undisputed that defendant Hines acted as landlord at the Renaissance Center, and it is also undisputed that plaintiff held the status

of a business invitee. See *Quinlivan v The Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244, 257 n 10; 235 NW2d 732 (1975). Landowners owe invitees the duty to exercise reasonable care to protect them from unreasonable risks of harm caused by dangerous conditions which the owners know, or should know, the invitees will not discover or protect themselves against. *Bertrand v Alan Ford*, 449 Mich 606; 609; 537 NW2d 185 (1995). While plaintiff avers liability against Hines based on its possession and maintenance of the property, plaintiff's theory of liability against Lakeside is not as clear. Plaintiff seems to alternatively argue that Lakeside also had possession of the property or that it's negligent maintenance of the property led to the injury.

Witnesses testified that the floor was sticky and the lighting in the lobby was dim. However, plaintiff could not assert whether she slipped or whether her knee gave out after stepping on something sticky. The record reflected that plaintiff's knee was previously injured and that it had given out on occasion. Nevertheless, she testified positively that she fell after passing through a sticky area onto a shiny area. Plaintiff's friend and coworker was walking in front of plaintiff, and she turned around when she heard plaintiff fall. She testified in her deposition that she saw a circular area that appeared to be a shiny and greasy, yet sticky, substance, and that the shiny area had a streak in it that looked as if plaintiff's shoe had slid through it. The coworker admitted, however, that she did not touch the substance, but drew her conclusions about the substance's viscosity from visual clues. Neither plaintiff nor the coworker testified that the shiny and sticky surfaces contrasted with the floor or were otherwise readily apparent.

Other witnesses testified that, after the fall, they felt that the floor was sticky, and that it was shiny in other places, as if freshly waxed. Nevertheless, none of them found a slippery area or any type of liquid on the floor. Plaintiff's coworker hypothesized that the size and shape of the circular area appeared to correspond with the buffing wheel on a buffing machine that, at least on the thirty-sixth floor, was stored in the same spot in the lobby of the freight elevator. However, the coworker admitted that she never saw the buffing machine leave any kind of sticky or greasy residue, and that it was just speculation about the source of the shiny substance.

Turning first to plaintiff's claims against Hines, plaintiff failed to present any evidence that Hines knew, or should have known, about a slippery condition in the lobby. The condition was not readily apparent, even to plaintiff when she first crossed the lobby. While the sticky area was apparently evident because of indistinct grayish spots, plaintiff failed to explain how defendant could detect the area without someone stepping on it. Despite several witnesses visually inspecting and walking the area after the fall, none of them could find a slippery spot.[1] Plaintiff failed to refute Hines's evidence that it lacked notice of any hazard in the area, and she fails to present any affirmative evidence that it should have known of the hazard following a reasonable inspection. Unlike *Clark v Kmart Corp*, 465 Mich 416; 634 NW2d 347 (2001),

[1] To the extent that plaintiff relies on the floor's stickiness as the underlying condition causing her fall, a "tacky" or sticky floor as described by all the witnesses does not create a dangerous condition that causes an unreasonable risk of harm. Several people walked over the sticky portion of the floor without any difficulty at all.

plaintiff failed to present any evidence regarding the age of the shiny spot. Therefore, plaintiff failed to create a genuine issue of fact regarding Hines's lack of duty to protect her from it.

Regarding plaintiff's claims against Lakeside, we agree with the trial court that it was not a possessor of the lobby for premises-liability purposes. Therefore, plaintiff may not rely on Lakeside's general failure to keep the area free from known dangers, but must affirmatively allege that Lakeside acted or failed to act in a way that breached a duty of care it owed to her. *Taylor v Laban*, 241 Mich App 449, 452; 616 NW2d 229 (2000). Although plaintiff and her coworker speculated that the shiny area was attributable to floor wax, this conclusion was principally based on the coworker's speculation that the area's parameters matched the size and shape of a buffing machine's wheel, and that she had seen a buffing machine parked in the same place on a different floor. The coworker admitted that she had never seen the machine leave a slippery spot on the floor, and neither plaintiff nor her coworker could positively identify the substance as wax. In fact, plaintiff's counsel argued that the slippery area could have come from a leaky garbage bag, because the tenants on that floor usually put their garbage in the freight-elevator lobby. In short, plaintiff failed to present any testimony regarding the source and identity of the substance, and never traced the shiny surface to any error or omission by Lakeside. Therefore, the trial court properly granted Lakeside's motion for summary disposition. *Id.* Given the fact that the trial court properly granted defendants' motion, the court did not commit palpable error, and it did not abuse its discretion when it declined to reconsider its summary disposition order. MCR 2.119(F)(3).

Affirmed.

/s/ Karen M. Fort Hood
/s/ Peter D. O'Connell